IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.106 OF 2005

Pandurang Appa Jadhav ...Appellant

Vs.

Husen Mahammad Jamadar
(since deceased through L.Rs.) ...Respondents

Mr.Sandesh D. Patil for the Appellants
Mr.Umesh Mankapure for the Respondents.

CORAM: A.S.OKA, J.
DATED: MARCH 30,2005.

P.C.:

1. Heard learned Counsel for the parties. The suit is by unsuccessful Plaintiff. The Trial Court dismissed the suit and the same has been confirmed by the Appellate Court.

2. Shri Patil for the Appellants submits that the trial Court recorded a finding that the Appellant-Plaintiff has established his title as regards Plot No.29 admeasuring 2000 sq.ft. and decree for removal of encroachment has been denied only on the ground that the suit was not for possession. He invited my attention to the first prayer in the plaint which is for mandatory injunction directing the Respodnent-Defendant to remove the encroachment. He submitted that an Advocate was appointed as a Court Commissioner and the report of the Court Commissioner shows that an encroachment has been made by the Respondent. He, therefore, submitted that the Court below could not have dismissed the suit. The learned Counsel for the Respondent has supported the impugned Judgment and Decree.

3. After considering the documents on record, a finding of fact has been recorded by the Appellate Court that documents of title relied upon by the Appellant itself shows that only a part of plot No.29 is acquired by the Appellant. The Appellate Court has noted that the extract of enquiry register shows that the Appellant is in possession of the area of 1100 sq.ft. and not 2000 sq.ft. The Appellate Court has held that in view of the of the description of the property in the extract of enquiry register, the Appellant has not established his title to the area of 2000 sq.ft.

4. The Appellate Court has taken a note of the fact that in the suit, a prayer for removal of encroachment was made. The Appellate Court held that there was no compliance made by the Appellant of the provisions of Order 7 Rule 3 as amended by this Court with effect from 1st October 1983 by producing a sketch showing the location and the extent of encroachment. No effort was made by the Appellant to get the alleged encroachment demarcated by seeking appointment of the Survey Officer under Maharashtra Land Revenue Code,1966 as a Court Commissioner.

5. In the light of the findings of the Appellate Court which are based on the oral and documentary evidence on record no fault can be found with the Judgment of the Appellate Court.

Second Appeal is dismissed with no order as to costs.

Judge.